October 6th, 2017

Scott Streiner, Chair & CEO
Canadian Transportation Agency
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Email: consultations@otc-cta.gc.ca

Dear Mr. Streiner,

RE: IATA Submission - CTA's Regulatory Modernization Initiative, Phase 2

The International Air Transport Association (IATA) was created in 1945 by a special act of the Canadian Parliament. Although incorporated in Canada and headquartered in Montreal, IATA's responsibilities are global in scope and vital to the safe, efficient, seamlessly networked conduct of international commercial air transport.

IATA's mission is to represent, lead and serve the airline industry. Our members comprise some 275 airlines in over 117 countries – including Canada, carrying 83% of the world's air traffic. As such, we have a significant interest in the CTA's Regulatory Modernization Initiative (RMI).

I am pleased to submit these comments in support of the CTA RMI - Phase 2 on behalf of IATA.

IATA promotes partnerships with governments around the world that result in regulation that delivers clearly defined, measurable policy objectives in the least burdensome way. This can only achieved via a transparent, objective, and consultative process. In support of the CTA's mandate, it is our hope that the RMI consultation process will point the CTA towards Smarter Regulation principles which can make a valuable contribution to this process. Essentially Smarter Regulation describes policy measures that create value by efficiently solving real problems with minimal compliance costs while enhancing competitiveness. Establishing a set of principles for the CTA could play a vital role for future developments.

With respect to "Charters", "Excluded Services" and "Canadian Ownership", our members have a wide spectrum of views in this regard and they are commercial in nature thus IATA does not have a position on these topics.

Item 2: Licensing - Code Sharing and Wet Leasing between Licensees

1. **Should the ATR be amended with regard to code-sharing and wet-leasing, and if so, how?**

   In respect of code-sharing, regulations should require safety monitoring (potentially performance or risk-driven) of:

   - Foreign code-share and wet-lease partners of Canadian air operators;
   - Foreign air operators that operate to/from Canada

   Such monitoring could be required from Transport Canada and/or Canadian air operators that code-share and wet-lease with foreign operators.

   Those foreign operators should be required to meet applicable ICAO standards. An accepted method for such monitoring and approval by Transport Canada should include the IATA Operational Safety Audit (IOSA) program option. The IOSA program is an internationally recognized and accepted evaluation system designed to assess the operational management and control systems of an airline. All IATA members are IOSA registered and must remain registered to maintain IATA membership.

   IATA does not have a policy on wet-leasing however the ATR's should be amended in consideration of   ICAO's work on Article 83 bis regarding aircraft leasing and their upcoming work on Cross Border Transfer (XBT) of Aircraft (aircraft leasing).

Item 3: Air Transportation – Air Insurance

1. **What changes to the ATR might be considered to improve the air insurance regime and ensure that air insurance requirements continue to be appropriate over time?**

   IATA strongly recommends that the CTA consult with experts from the aviation insurance market to fully comprehend what challenges may exist in terms of current exclusions, as well as standard prescribed forms of certificates of coverage and endorsement.

2. What would constitute an adequate amount of passenger liability and public liability coverage and why?

IATA is not aware of any situations in which insurers' payments have been inadequate. Large carriers in Canada generally have a minimum level of coverage that far exceeds the current regulatory minimum. Increasing the requirements could increase premiums as such any amendments should be proportionate to any problems.

3. What amendments, if any, could be made to: the allowed standard exclusion clauses; the certificate of insurance form; the certificate of endorsement; and the annual filing requirement?

Due consultation (Smarter Regulation) must take place with industry to understand the impact and avoid any unintended consequences.

Item 4: Air Transportation – Business Models

1. Do the regulations need to be amended to proactively keep pace with changing air service business models? If so, how?

One area we believe the CTA should be aware of is the effort by IATA and its member airlines to modernize airline distribution.

The following will provide a brief description of the history of airline distribution, the effort to modernize that system, what it means for consumers and the implications for regulators. We will also include links to various publications and videos from the iata.org website for further information.

Airline Distribution Background

More than 40 years ago, airlines used to sell their tickets directly to consumers using a very manually intensive process that was inefficient and costly. As airline tickets became more complex and computers became more accessible, airlines began to develop computer reservation systems (CRS).

When US deregulation occurred in 1978, airline fares were no longer set by the government, introducing significantly more complexity in the distribution process. The airlines put a system in place where fares were filed with a third party group called ATPCO and schedules were filed with another third party organization called OAG. The fares were filed in specific "buckets" of availability, which dictated how many tickets were sold at what price and when.

The airlines decided to spin out their CRS's to what are now three main Global Distribution Systems, or GDSs: Sabre, Amadeus and Travelport (in addition to TravelSky, a Chinese GDS). The GDSs would build offers from the two databases in response to requests by travel agents. Airlines would pay a per ticket fee for constructing offers that resulted in a sale to a passenger. The system was attractive to airlines because it allowed them to distribute their tickets globally in an efficient manner via a network of brick and mortar travel agents powered by the GDSs.

This all changed with the advent of the Internet. On the airline side, airlines are now able to market and distribute their tickets (and more recently ancillaries) directly from their websites rather than relying on third party distributors and databases. On the travel agent side, brick and mortar travel agencies gave way in large part to online travel agencies for leisure travelers (such as Expedia and Travelocity) and Travel Management Companies (or TMCs) for business customers.

Today, airlines distribute a significant portion by volume of their tickets and ancillary services via their own websites. However, the airlines continue to rely on TMCs to distribute the majority of their higher margin business fares, as business customers demand more personal service than can be offered by the airline website. As such, the GDSs continue to have a significant role in airline distribution through online travel agents that cater to leisure and business travelers

Internet technology and standards have enabled airlines to market airline tickets and ancillaries via their website in the manner in which they want those products and services displayed and delivered. Using Internet based communication protocols, the airlines can now show potential customers exactly what they are purchasing when coming to their website. For example, an increasing number of airlines are displaying pictures of airline seats, meals and other amenities to potential customers visiting their site. You can also purchase ancillary services like seat selection, meals and baggage on the website. Airlines are also beginning to personalize product offerings in the same way that Amazon does when you purchase items from that site. While you can shop anonymously, by identifying yourself (and your status with the airline) you are eligible for special offers such as free checked baggage or alternative seat selection. The Internet also allows the airline to quickly deliver these special offers to passengers and experiment with products and services that the airline believes the passenger might be interested in.

While the Internet has modernized the direct distribution (direct = by the airline directly to consumer), the same cannot yet be said for indirect distribution (indirect = consumer to travel agent to consumer). The GDS's continue to maintain the system that was first developed 40 years ago using the same communications protocol (EDIFACT) that powered the fare filing system described above. This protocol is limited in a way that makes it impossible for airlines to distribute through travel agents the type of rich and personalized offers that they can present to customers via their website. Instead,

airlines can only display fare and schedule information via the indirect GDS-powered travel agent channel. This limitation is extremely challenging for airlines who have made significant investments in these product offerings, only to find themselves unable to market them effectively through the indirect channel. Displaying only fare and availability makes it very difficult for an airline to differentiate themselves by their product offerings. Finally, since the relationship in the indirect channel is between the customer and the travel agent, the airline is unable to personalize offers as they do not know who the passenger is until after the ticket is purchased.

New Distribution Capability (NDC)

Several years ago, IATA member airlines asked our association to develop a new internet-based standard to enable airlines to distribute these rich offers directly to travel agents rather than using the fare filing system that is limited to fare and availability. In response, IATA developed the so called "New Distribution Capability" or NDC, an XML-based communications protocol that allows for the efficient presentation of rich content to travel agents (brick and mortar or online travel agencies). IATA's third annual airline survey conducted in March 2017 revealed that a total of 113 airlines - or around 60% of the total number of airlines surveyed - have already deployed NDC or have plans to deploy the standard. This is a 31% increase compared to 2016.

Not surprisingly, the GDSs were not supportive of NDC. Their business model is based on their putting together airline offers from the fare and schedule filings in the 3rd party data houses (ATPCO and OAG). They charge airlines per ticket for this offer presentation to the agents, a portion of which they kick back to the travel agents. This disintermediation of the GDSs by the airlines via their direct NDC offer to agents is a serious threat to the future of the GDSs themselves.

Regulatory Implications

In the United States, the GDSs have sought the protection of the U.S. Government from the completion/threat posed by NDC. In doing so, the GDSs have claimed that airlines are using NDC to circumvent a well-established system that gives consumers the ability to easily compare airline tickets on a "apples-to-apples" basis, i.e. without slick marketing or complicated fare rules etc. that tend to confuse or abuse passengers. Rather than accepting the fact that passengers benefit from more information (not less) on what they will receive as part of their ticket purchase, GDSs have argued that passengers will be taking advantage of if airlines are able to present these robust offers directly to travel agents. GDSs also argue that rather than presenting useful personalized offers, airlines will use information on the passenger to raise the price of their travel. The GDSs sought unsuccessfully to convince the U.S. DOT not to approve the NDC standard. They also sought a regulation that would require airlines to distribute ancillary services through the GDS channel (even though their system is not capable of distributing those services). They argue that failure of

airlines to distribute through the GDS channel is somehow an "unfair and deceptive practice" that DOT must stop.

To date, GDS efforts in this regard have been unsuccessful, though they continue to try to enlist government support for their antiquated distribution network.

We have cautioned US and EU regulators that now is not the time for government intervention in a business dispute between airlines and monopoly suppliers. It is clear that the internet has forever changed airline distribution for the better and the airlines' decision to distribute rich content through the agent channel is pro-consumer. Further, we have stressed that the free market is moving too quickly for regulators to keep up with what would inevitably be pro-consumer, pro-competitive developments such as NDC.

Below are some links to studies and videos that provide further details on airline distribution and NDC;

http://www.iata.org/whatwedo/airline-distribution/ndc/Pages/default.aspx

http://www.iata.org/whatwedo/airline-distribution/ndc/Documents/ndc-future-airline-distribution-report.pdf

http://www.iata.org/whatwedo/airline-distribution/ndc/Pages/ndc-videos.aspx

Item 8: Agency Guidelines and Tools

1. **Are there any current guides or tools that require updating to more effectively achieve public policy goals, or better align with best practices in the regulatory field? If so, what changes could be considered?**

   In 2014, IATA began its work on Smarter Regulation, looking at regulatory practices by governments around the world as well as work that has been done in this field by a number of international organizations, including the OECD. We found a consensus around several key principles, which we divided into two categories: principles by which regulations should be designed, and ones that should govern the process of enacting a regulation. This set of principles constitutes IATA's Smarter Regulation methodology, a copy of which is attached to this submission.

   These principles were presented at the 39th ICAO Assembly. IATA's working paper was supported by 12 states and regions, including the European Commission, Brazil, Germany, South Africa, the United Arab Emirates and Nigeria.

2. **Are there other guides or tools that would be useful?**

Other tools and guidelines that address the quality of domestic rulemaking have been developed by numerous governments and international organizations. A few of them are listed here:

•   OECD Recommendation on Regulatory Policy and Governance
•   APEC Integrated Checklist on Regulatory Reform
•   EU Better Regulation Guidelines
•   Council of Australian Governments Best Practice Regulation Guide
•   Malaysia Best Practice Regulation Handbook

Trends in regulatory policy tools[1]

Stakeholder engagement - countries are embracing the consultative process. The number of countries that conduct formal consultations in the OECD sample size rose from 24 in 2005 to 35 in 2014. In addition, 8 countries have even made consultation a constitutional requirement.

When it comes to stakeholder engagement, Canada is rated above average in the areas of methodology and systematic adoption, and average in the areas of transparency and oversight and quality control relative to OECD member countries.

The research illustrates that some tools, such as advisory groups and preparatory committees are used in the early stages of the engagement process (preferably before the administration begins to work on a draft of the regulation in question). Others, such as posting draft regulations on the internet for public comment and formal consultations with groups of stakeholders, are used later in the engagement process. Still others, such as public meetings, are used by countries at various stages of the engagement process.

While consultations are done by many countries before a law is enacted, stakeholders are rarely engaged in the implementation and enforcement phases of the regulation. This additional consultation can limit unnecessary burdens and better target enforcement methods. In the UK for example, the government has set up a Business Reference Panel consisting of industry associations and companies for systematic cooperation, exploring matters of compliance, enforcement and monitoring.

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[1] Source: OECD Survey Data and OECD 2015 Regulatory Policy Outlook

Countries are increasingly experimenting with new information technology tools, but this has yet to significantly change the underlying process by which stakeholder engagement is run. Some countries, such as New Zealand, are experimenting with social media, while others have established wiki sites for public policy experts. However, this continues to be at an early stage.

Impact Assessments

In the area of impact assessments, there are opportunities for broader consultations by using information technologies. For example, disclosing the regulatory impact assessment (RIA) online and using a crowdsourcing approach could contribute towards a better assessment of the costs and benefits of a proposed policy intervention. Only a minority of countries currently release RIA documents for consultation with the general public. Keep in mind here we are differentiating between a consultation on the regulatory proposal and a consultation specifically on the RIA.

Ex-post impact assessments (after the regulation is in place) remain a challenge for many jurisdictions. This is an area where significant improvement is needed, as most countries in the survey do not systematically conduct an ex-post evaluation or avail of concrete methodologies and guidance.

In the specific case of Canada, the country scores above average relative to its OECD peers when it comes to systematic adoption and transparency of ex-post analysis, but average when it comes to the methodology and oversight and quality control.

In Mexico, the oversight of the RIA is performed by the Federal Regulatory Improvement Commission (COFEMER), an independent body at arms-length of the government.

In addition, the majority of ex-post exercises, when they are conducted, are focused on a specific piece of regulation itself, as opposed to the overall body of the regulation and its cumulative impact as a whole. This latter approach could be useful as it allows governments to better understand the entire burden on actors. Such an assessment could take the form of a sectoral approach, such as the entire aviation regulatory framework, or focus on a specific stakeholder, such as regulations covering airlines.

The OECD suggests that no new regulation is adopted without such a retrospective analysis of the existing regulatory environment, allowing the

government to better understand the coherence of the overall regulatory burden on business.

In Australia, for example, government agencies undertake a post-implementation review (PIR) for all regulatory changes. For regulations deemed to have a major impact, a PIR must be completed within five years of its implementation; for other regulations, within two years.

Methodologies used in ex-post evaluation include identification of unintended consequences, comparisons of the actual versus predicted impacts, assessment of consistency with comparable international standards, and assessment of achievement of goals.

An innovative evolution of ex-post evaluation is cross-country comparisons of regulations. Australia and New Zealand, for example, looked at food safety regulations in their respective countries, appraising domestic performance, achieving greater consistency and removing unnecessary compliance costs. Of course, this can also be done internally within a government, where a central body can identify differences in regulatory requirements and practices across states or provinces.

Thank you for the opportunity to provide these comments. We look forward to participating in any further consultation on this matter.

Sincerely,

Nicola Colville

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International Air Transport Association

cc: Allison Fraser, Team Leader - Regulatory Affairs, Canadian Transportation Agency
    Douglas Lavin, Vice President - Member and External Relations North America, IATA